



मामला क्रमांक C.A. No. 1245/2003 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No. 1245/2003</u> <u>APPELLANT</u> Gholdru @ Rohit Kumar, S/o. Lorgot Teli aged 30 years, R/o. Sedam P.S. Batouli Distt. Sarguja (C.G.) <u>Versus</u> <u>RESPONDENT</u> State of Chhattisgarh, through P.S. Batouli, Distt. Sarguja (C.G.) <u>D.B. :</u> <u>Hon'ble Shri L.C. Bhadoo and</u> <u>Hon'ble Shri Dharendra Mishra, JJ.</u> <u>19-6-2007</u> Smt. Usha Chandrakar, Advocate, for the appellant. Shri D.K. Gwalre, Addl. Public Prosecutor, for the respondent/State. Arguments heard. Oral judgment dictated on <i>Dais</i>. <u>ORAL JUDGMENT</u> <u>Per L.C.Bhadoo, J. :</u> This appeal is directed against the judgment of conviction and order of sentence dated 9-5-2000 passed by the Sessions Judge, Sarguja (Ambikapur) in S.T. No. 118/1999, whereby the learned Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life, to pay a fine of Rs. 200/-, and in default of payment of fine, to further undergo three months' imprisonment. 2. Case of the prosecution, in brief, is that on 15-2-1999 at about 7.00 a.m., the deceased Parsan went to the house of Rondhabai (P.W. 5). Accused Rohit Kumar alias Dholdu also came	

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	there and attacked the deceased with the axe two or three times and ran away. Rondhabai (P.W. 5) raised cries, people collected there. P.W. 4 Bijobai, wife of the deceased, also came there, she gave water to her husband. The injured Parsan was taken to Community Health Centre, Batouli where Dr. G.R. Kurre (P.W. 9) treated him. The matter was reported by Dr. G.R. Kurre (P.W. 9) under Ex. P-19. The matter was also reported by Shivnath (P.W. 1) under Ex. P-1 to Police Station, Batouli. After registering the case, the Investigating Officer left for the scene of occurrence, after giving notice Ex. P-2 to the Panchas, prepared inquest Ex. P-3 on the body of deceased Parsan. Post mortem on the body of deceased Parsan was conducted in the Government Hospital, Ambikapur. Dr. B.P. Chandra (P.W. 6) conducted post mortem, prepared report Ex. P-6, in which he has found that mode of death is coma due to severe subdural hematoma resulted from injury over scalp. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur where prosecution examined 9 witnesses in order to establish the charge against the accused. Statement of the accused was recorded under Section 313 of Cr.P.C. in which he denied the material appearing in the prosecution evidence against him. Learned Sessions Judge after hearing the learned counsel for respective parties, convicted and sentenced the accused as aforementioned.	

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	3. We have heard Smt. Usha Chandrakar on behalf of the appellant and Shri D.K. Gwalre on behalf of the State. 4. Learned counsel for the appellant has not disputed the homicidal death of Parsan, moreover, P.W. 5 Rundhabai has stated that the accused attacked the deceased with the axe, Dr. B.P. Chandra (P.W. 6) has stated that on 18-2-1999 he conducted post mortem on the body of Parsan and found that there was a stiched wound on right side of occipital region in size of 3.5 cm, there was a stiched wound on left parietal region 4 cm in length and there was stiched wound on centre of parietal region, on opening of the injuries, it was found that there is ecchymoses over the subcutaneous tissues, back side of bone of centre parietal was fractured, there was a subdural hemotoma, injuries were ante mortem in nature, cause of death was head injury and death was homicidal in nature. In view of the above, it is established that death of Parsan was homicidal in nature. 5. As far as involvement of the accused in crime in question is concerned, P.W. 4 Bijobai, wife of the deceased, has stated that when she went near her husband, on enquiry, he disclosed that accused had attacked him with the axe but in cross-examination, she has stated that her husband was unconscious. He was not in a position to talk but he was saying that he will not survive. She has not categorically stated that when she reached near her husband, he was in a position to speak. In view of the above evidence, it is not established that the deceased made any oral dying declaration	

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	before this witness. P.W. 5 Rundhabai has stated that Parsan came to his house and she saw the accused attacking the deceased Parsan with the axe, at that time, Parsan was at her residence. He was husband of her sister-in-law. He came to her house, thereafter accused came with the axe and attacked Parsan. Defence has not been able to discredit the evidence of this witness in cross-examination regarding the attack made by the accused. Therefore, involvement of the accused in the crime in question is established in view of the evidence of P.W. 5 Rundhabai. 6. Learned counsel for the appellant argued that the injury was inflicted on 15-2-1999 whereas Parsan died on 18-2-1999, moreover Dr. P.W. 9 Dr. G R. Kurre who has examined the injuries of the deceased has stated that the injuries were caused from back portion of the axe, therefore, had the accused had intention to cause death of Parsan, then he ought to have attacked Parsan from the sharp side of the axe. 7. On the other hand, learned Addl. Public Prosecutor supported the judgment of the trial Court. 8. Arguments advanced by learned counsel for the appellant has substance because had the accused had any intention to cause death of Parsan, then he ought to have attacked the deceased from sharp side of the axe, moreover, the deceased Parsan died about after three days of sustaining injury. In the circumstances, we are of the considered opinion that the prosecution has not been able to establish the offence under	

23

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	Section 302 of I.P.C. however, the manner in which the accused attacked the deceased with the axe, offence under Section 304 Part II of I.P.C. is established. 9. In the result, the appeal partly succeeds. The conviction and sentence imposed upon the appellant under Section 302 of I.P.C. are set aside, instead thereof, the accused is convicted under Section 304 Part II of I.P.C. Since the accused is in detention since 17-2-1999 and thereby he has undergone sentence for more than 8 years, therefore, we are of the considered opinion that if the accused is released on the sentence undergone by him, that will meet the ends of justice. Accordingly, while maintaining the conviction, the accused is sentenced to the period already undergone. He be set at liberty forthwith if not required in any other case. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge